

MEMORANDUM OF AGREEMENT REGARDING COLLABORATION ON THE DEVELOPMENT OF THE BAY DELTA CONSERVATION PLAN

This Memorandum of Agreement ("MOA") Regarding Collaboration on the Bay Delta Conservation Plan ("BDCP") is entered into as of the last date of execution of the signatories hereto. The MOA establishes a joint process among the [state and federal agencies] and the undersigned non-governmental organizations ("NGOs"), local governments, and fishing organizations ("Fishing Groups").

The purpose of this MOA is to enable timely analysis of conservation measures and water supply reliability measures, including alternative Delta flow and operational regimes that are being developed in the Bay Delta Conservation Planning process.

RECITALS

- A. The 'Planning Agreement Regarding The Bay Delta Conservation Plan' was signed on October 6, 2006.
- B. Proposed operations of the State Water Project ("SWP") and the Central Valley Project ("CVP")(collectively "Projects") have been found to jeopardize the continued existence of Central Valley salmon and other federal and state listed endangered and threatened species.
- C. The BDCP is intended, *inter alia*, to result in a Habitat Conservation Plan ("HCP") and Natural Communities Conservation Plan ("NCCP") conserving and protecting 63 covered species in the Delta region and providing sufficient contribution to recovery to support the issuance of incidental take permits pursuant to state and federal endangered species statutes for the Projects intended to last 50 years.
- D. Certain environmental NGOs are parties to the BDCP Planning Agreement.
- E. In October 2010, NGOs provided the state and federal agencies with an appendix of 20 letters written over the course of the BDCP documenting issues requiring resolution in the interest of a successful HCP/NCCP for the Projects.
- F. In November 2010, the Natural Resources Agency made a working draft of the BDCP HCP/NCCP available to the public.
- G. In December 2010, the Natural Resources Agency released its "Highlights of the BDCP".
- H. In December 2010, the federal government released its "Interim Federal Action Plan Status Update for the California Bay-Delta: 2011 and Beyond" ("Interim Action PlanUpdate").

- I. In December, 2010, NGOs released their Statement Regarding the BDCP Working Draft, noting in particular that the Draft “does not represent any agreement or consensus on the part of the Steering Committee participants. While it does in places incorporate some of [the NGOs’] views and comments, it does not yet reflect many of the concerns and recommendations that our organizations have raised throughout the BDCP process, and substantial further work is required to adequately address these goals.”
- J. To date, the NGOs have invested significant resources and effort toward supporting the BDCP planning effort on technical, scientific and policy levels. This includes direct assistance and in-kind contributions in the form of technical and scientific work. The NGOs anticipate dedicating significant additional resources to support successful completion of the BDCP.

AGREEMENT

NOW THEREFORE, it is mutually agreed by the Parties as follows:

- A. The Parties shall work jointly to meet the objectives of this MOA.
- B. The Parties are committed to applying sound scientific principles to the BDCP planning process. This includes specifically implementation of the Logic Chain approach to analyzing the ecological effects of the project, pursuant to the document entitled “Logic Chain Implementation to Develop a Credible BDCP Permit Application (including refined Conservation Strategy, Science-based Effects Analysis, and Specific Adaptive Management Plan),” provided to the Agencies by the NGOs on or about [date]
- C. The Parties are committed to the development and adoption of biological performance goals and objectives for the BDCP that are specific, measurable, achievable, relevant and time-bound, including population-level objectives. The Parties further agree that these goals and objectives will be employed to design the Conservation Strategy, to serve as a foundation for adaptive management, to measure the BDCP’s performance and ultimate success, and, as appropriate, to be incorporated into permit terms. At a minimum, the metric for Central Valley salmon recovery shall comply with the anadromous fish doubling mandate established in 1992 by the Central Valley Project Improvement Act Sec. 3406(b)(1) [cite].
- D. The Parties agree that an essential element of a successful BDCP is to provide the greatest measure of certainty for Covered Species, to the extent provided by law, that the BDCP’s Conservation Strategy will successfully achieve the biological goals, objectives and performance metrics of the HCP/NCCP, and do so in a timely manner. In recognition of the importance of this issue for the Covered Species, and notwithstanding that the conservation elements of the BDCP are still under development, the Parties will give priority to identifying an expeditious process for developing assurance mechanisms to address this issue. Therefore, the Parties will meet within 30 days of the effective date

of this MOA to evaluate assurance mechanisms for ecological performance measures with a goal of developing such measures within the timeframes by [date]

- E. As required by the Delta Reform Act of 2009, the Parties are committed to using the flow criteria developed by the California State Water Resources Control Board [cite to report] in “informing planning decisions for ... the Bay Delta Conservation Plan.” Sec. 85086(c)(1). The Agencies agree to describe how the flow criteria will inform BDCP planning decisions by [date]. This proposal will include incorporating the Board’s flow criteria as an alternative in the effects analysis and the DEIR/S, and ensuring a range of operations in both documents that covers the range between the Board’s criteria and the current alternatives in the EA. Finally, this proposal will describe how the Board’s methodology and scientific conclusions will be incorporated into the analysis in the EA, DEIR/DEIS and other documents.
- F. As required by the Delta Reform Act, the Parties are committed to including in the BDCP Effects Analysis and DEIR/DEIS “a comprehensive review and analysis of... a reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.” Sec. 85320(b)(2)(A). The Parties further agree that the EA and the DEIR/DEIS will include as an alternative the operations scenario prepared by several NGOs, known as scenario 7(a).
- G. As required by the Delta Reform Act, the Parties are committed to including in the BDCP “a transparent, real-time operational decisionmaking process in which fishery agencies ensure that applicable biological performance measures are achieved in a timely manner with respect to water system operations,” Sec. 85321, and a date certain for NGO and other review of draft proposals well in advance of the release of the draft EIS/EIR.
- H. In compliance with the policy of the State of California to “reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies,” Delta Reform Act, § 85021, the BDCP DEIR/DEIS will analyze water supply alternatives to Delta exports, particularly those likely to be less costly and/or environmentally harmful than new conveyance.
- I. The Parties agree that the fundamental purpose of the BDCP is to restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetlands ecosystem (Water Code sec. 85020(c)) and to improve the reliability of the remaining water available for export and other beneficial uses (Water Code sec. 85320(b)(2)(A)). The Parties further agree that improved reliability requires an improvement in the predictability of and a reduction in the vulnerability of Delta water supplies, not an increase in water exports above current levels.

- J. All draft task orders, draft “notice-to-proceed” orders, and consultant work regarding the BDCP including draft products or technical analyses provided to state and federal water exporters and/or their agents in connection with any aspect of the BDCP shall also be made available to the NGOs [and other parties] at the same time and in the same manner.
- K. The NGOs [and other parties] will be invited to participate in any meetings with the BDCP consultant team that include staff, consultants or attorneys for the export water agencies, with or without state and federal agencies.
- L. The Parties agree that by [date] the federal agencies will clarify how they intend to comply with Section 7 of the ESA, including how they will ensure that the BDCP documents used in this compliance process will meet federal requirements and standards.
- M. The Parties agree that state and federal agencies will prepare, with extensive public participation, a document detailing the rights and responsibilities of BDCP permittees before state and federal agencies agree to support an application proposing the export water agencies as permittees.
- N. The Parties agree that state and federal agencies will ensure that any contract administration role provided by the export water agencies will be ministerial in nature and will not provide any influence over the substance of the BDCP plan, the methodology employed in analysis, direction received by consultant, the conclusions of technical analysis, the selection of consultants or other substantive and analytical aspects of the BDCP process.
- O. The Parties agree that the BDCP will prepare a draft financing plan by [date], in a public and transparent process, which is designed to implement, to the greatest extent possible, a “beneficiary pays” approach to financing. The Parties agree that this process must include careful analysis to determine mitigation requirements, public benefits, and other aspects of a finance plan. The Parties further agree that this draft finance plan must address a full range of conveyance capacities and operations.
- P. As requested by the agencies, the NGOs shall provide expertise, guidance, and data on those matters for which they have expertise or authority, as needed to carry out the work and meet the purpose of this and the Planning Agreement Regarding the BDCP.
- Q. The NGOs recognize that the Agencies have developed an aggressive timeline for completion of the BDCP. The Parties agree that this timeline will in no event serve as an excuse or basis for failing to conduct reasonably required scientific or technical analyses or failing to fully consider alternatives to take, or alternatives within the EIS/EIR process, that would or could provide a more appropriate contribution to recovery of the 63 Covered Species than the alternatives currently under review.